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BEFORE THE ARIZONA CORPORATION COMMISSION**RECEIVED****COMMISSIONERS**

MARC SPITZER, Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON
KRISTIN K. MAYES

2003 NOV 26 P 1:57

AZ CORP COMMISSION
DOCUMENT CONTROL**IN THE MATTER OF:**

DOCKET NO. S-03482A-03-0000

INTERSECURITIES, INC.
570 Carillon Parkway
St. Petersburg, FL 33716-1202
CRD# 16164

Arizona Corporation Commission
DOCKETED

NOV 26 2003

GREGORY RUSSELL BROWN and
JANE DOE BROWN, husband and wife
16417 South 15th Drive
Phoenix, AZ 85045
CRD# 2233684

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Respondents.

PROCEDURAL ORDER**BY THE COMMISSION:**

On May 6, 2003, the Securities Division ("Division") of the Arizona Corporation Commission ("Commission") filed a Notice of Opportunity for Hearing Regarding Proposed Order to Cease and Desist, for Restitution, for Administrative Penalties, and For Other Affirmative Action ("Notice") against Intersecurities, Inc. ("ISI") and Gregory Russell Brown and Jane Doe Brown (collectively "Respondents") in which the Division alleged that Respondents have engaged in acts, practices, and transactions that constitute violations of the Arizona Securities Act ("Act").

On June 23, 2003, ISI filed its Answer and also requested a jury trial in this matter.

On July 11, 2003, the Browns filed a Motion to join ISI's demand for a jury trial.

On August 22, 2003, by Procedural Order, a pre-hearing was scheduled for October 15, 2003 to address the Respondents' request for a jury trial.

On August 29, 2003, ISI filed a motion requesting a jury trial. Subsequently, the Browns joined ISI's motion for a jury trial.

On September 23, 2003, the Division filed a Response that objected to the Respondents' request for a jury trial.

1 On October 7, 2003, ISI filed a Reply to the Division's Response.

2 On October 15, 2003, the pre-hearing was held as scheduled. Intersecurities and the Browns
3 appeared through counsel. The Division was also represented by counsel. At the pre-hearing the
4 parties advocated their positions regarding the Respondents' request for a jury trial.

5 Respondents argued that the Division's Notice would have triggered a jury trial right at
6 common law, because it is an action of debt, or because it subjects Respondents to a severe penalty.
7 Essentially, Respondents argued that the Division is bringing this action on behalf of the individuals
8 in this case whom the Division asserts should be paid restitution by Respondents and/or seeks to
9 assess severe penalties upon Respondents. ISI argued that it is undisputed that the Division is
10 seeking restitution from ISI although it did not receive any monies from the sales of phones at issue
11 in this case. Therefore, ISI argued that the "restitution" sought by the Division in this case is akin to
12 a penalty. Respondents argued that, since the Division is seeking administrative penalties and
13 restitution, which is allegedly also a penalty, Respondents were entitled to a jury trial. Respondents
14 further argued that the Public Rights Doctrine does not apply in this case. Respondents also argued
15 that the Arizona Constitution states that a party's right to a jury trial remains inviolate, and that
16 although the Legislature granted certain remedies to the Commission in 1986 legislation, the
17 Legislature "forgot" to put in place a mechanism for a jury trial when it expanded the Commission's
18 powers. Finally, Respondents argued that since the Commission rules were silent about a jury trial,
19 then it must follow the Arizona Civil Rules of Procedure, which require a jury trial.

20 The Division argued that the parties were still in the process of completing discovery and,
21 therefore, the facts of this case regarding the monies received by ISI were still in dispute. The
22 Division further argued that Respondents were not entitled to a jury trial as this proceeding is not
23 similar to an action in common law, but rather is an action to enforce the Act and protect public
24 rights. The Division argued that enforcement of the Act promotes economic and social policies
25 independent of the claims of the individual investors in this case. The Division further argued that
26 even if there is a benefit to the individual investors in this case, that result does not override or
27 outweigh the Commission's interest in protecting the public and enforcing the Act. Regarding the
28 issue that "restitution" or fines in this case would amount to a severe penalty, the Division argued that

1 it requested several remedies in this case, including restitution and fines, and those requests do not
2 move this matter from a public rights area to a private rights area. Further, the Division argued that
3 the Legislature established that the Commission should determine at a hearing what remedies are
4 appropriate, therefore, without the appropriate facts and information, the Respondents' arguments
5 regarding penalties is premature. Thus, the Division argued that Respondents were not entitled to a
6 jury trial.

7 At the conclusion of the arguments, the Respondents' request for a jury trial was denied.
8 Respondents' argument based on common law doctrine was flawed as this matter is not a debtor's
9 action in which the Division is acting on behalf of the investors in this case; rather the Division is
10 attempting to protect the public as a whole because the Legislature determined that it is appropriate to
11 protect the public from an unregulated securities industry. Respondents' argument that restitution in
12 this case is actually a penalty is unconvincing as an order for restitution, based on specific actions of
13 a respondent or through a control person liability theory, reestablishes the status quo and, therefore, is
14 not a penalty. Respondents' argument that it is subject to severe administrative fines or penalties in
15 this matter was not substantiated at the pre-hearing. No right to a jury trial is provided for by the
16 Arizona Constitution, the Act or by Commission rules. Although the Rules of Civil Procedure are
17 instructive to the Commission, the procedures for this case are set forth in the law, Commission rules,
18 and through orders, so the Rules of Civil Procedure are inapplicable. Additionally, pursuant to
19 A.A.C. R14-3-101, the Civil Rules of Procedure do not apply to any investigation of the
20 Commission, any of its divisions or its staff.

21 On November 10, 2003, by Procedural Order, a pre-hearing was scheduled for November 18,
22 2003.

23 On November 18, the pre-hearing was held as scheduled. Intersecurities and the Browns
24 appeared through counsel. The Division was also represented by counsel. During the course of the
25 pre-hearing, the parties stated that, based upon the amount of discovery required in this matter,
26 another pre-hearing would be necessary. Additionally, the Respondents requested that another pre-
27 hearing be scheduled as they plan to file a special action regarding the denial of their motion for a
28 jury trial.

Accordingly, a pre-hearing conference should be scheduled in order to address the discovery issues, the presentation of evidence and the scheduling of discovery timelines and a hearing.

IT IS THEREFORE ORDERED that a pre-hearing conference shall be held on February 9, 2004 at 9:30 a.m. at the Commission's offices, 1200 West Washington, Phoenix, Arizona.

IT IS FURTHER ORDERED that the Ex Parte Rule is still in effect.

IT IS FURTHER ORDERED that the Presiding Officer may rescind, alter, amend or waive any portion of this Procedural Order by subsequent Procedural Order or by ruling at hearing.

DATED this 26 day of November, 2003.



PHILIP J. DION III
ADMINISTRATIVE LAW JUDGE

Copies of the foregoing mailed/delivered this 26 day of November, 2003 to:

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Arizona Corporation Commission

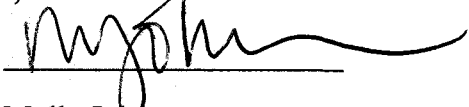
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